

11 NICK O'ROURKE,

12 Plaintiff,

13 v.

14 PETALUMA HEALTH CENTER, INC., et  
15 al.,

16 Defendants.

17 NICK O'ROURKE,

18 Plaintiff,

19 v.

20 ANNIE NICOL, RN, FNP, PA,

21 Defendant.

Case No. 3:15-cv-03215-LB

**ORDER TO SHOW CAUSE**

[Re: ECF No. 11]

Case No. 3:15-cv-03219-LB

**ORDER TO SHOW CAUSE**

[Re: ECF No. 6]

22 These cases both involve the plaintiff Nick O'Rourke's challenges to medical care that he  
23 received at Petaluma Health Center in 2014. (*See* Complaints, both at ECF No. 1.<sup>1</sup>) Mr. O'Rourke  
24 filed claims in small claims court, naming Petaluma Health Center and three employees in one  
25 case and naming one employee in the second case. (*See id.*) The United States removed both cases

26  
27 <sup>1</sup> Citations are to the Electronic Case File ("ECF"); pin cites are to the ECF-generated page  
28 numbers at the tops of documents. The court refers to case 3:15-cv-03215-LB as "O'Rourke 1"  
and case 3:15-cv-03219-LB as "O'Rourke 2."

1 to federal court and moved to (1) substitute in as the sole defendant on the ground that Petaluma  
2 Health Center and its employees are deemed federal employees for the medical care that they  
3 provide at the center and (2) dismiss the cases without prejudice for lack of subject-matter  
4 jurisdiction because Mr. O'Rourke has not exhausted his administrative remedies under the  
5 Federal Torts Claims Act ("FTCA"). (*See* O'Rourke 1 Motion to Dismiss, ECF No. 11; O'Rourke  
6 2 Motion to Dismiss, ECF No. 6.) The motions are set for hearing on August 20, 2015. Mr.  
7 O'Rourke has not filed any opposition or statement of non-opposition to the United States's  
8 motions, and he has not responded to several clerk's notices asking him to consent or decline the  
9 undersigned's jurisdiction. Under the circumstances, the court resets the motion hearing to August  
10 27, 2015 at 9:30 a.m. and orders Mr. O'Rourke to show cause why his cases should not be  
11 dismissed without prejudice for failure to exhaust administrative remedies.

12 For Mr. O'Rourke's edification, the court provides the following additional context. The  
13 United States filed certifications that the defendants are federal employees. (*See* O'Rourke 1  
14 Torres Decl., ECF No. 12; O'Rourke 2 Torres Decl., ECF No. 7.) For the medical claims at issue,  
15 the FTCA is the exclusive remedy for torts against federal employees acting in the scope of their  
16 employment. *See* 28 U.S.C. §§ 1346(b)(1), 2679(b)(1). Before filing suit, a plaintiff must present  
17 his or her administrative claim to the appropriate agency within two years of the incident, *see* 28  
18 U.S.C. § 2401(b), and the agency must either "finally den[y]" his or her claim or fail to arrive at a  
19 "final disposition of [his or her] claim within six months after it is filed," *see* 28 U.S.C. § 2675(a).  
20 "The claim requirement of section 2675 is jurisdictional in nature and may not be waived." *Burns*  
21 *v. United States*, 764 F.2d 722, 723 (9th Cir. 1985). If a plaintiff does not present his claims to the  
22 agency, the district court cannot assert subject-matter jurisdiction over the plaintiff's FTCA claim.  
23 *See* 28 U.S.C. § 2675(a); *McNeil v. United States*, 508 U.S. 106, 111-12 (1993); *Burns*, 764 F.2d  
24 at 723.

25 Here, the United States asserts that Mr. O'Rourke did not file administrative claims with the  
26 Department of Health and Human Services. (*See* O'Rourke 1 Torres Decl., ECF No. 12; O'Rourke  
27 2 Torres Decl., ECF No. 7.) If he has not, then the court lacks subject-matter jurisdiction to  
28 consider the claims. He must do so before the court can consider his claims.

Under the circumstances, the court directs Mr. O'Rourke to appear at 450 Golden Gate Avenue, 15th Floor, Courtroom C, 450 Golden Gate Avenue, San Francisco, California on Thursday, August 27, 2015 at 9:30 a.m. to show cause why his cases should not be dismissed without prejudice for failure to exhaust administrative remedies. Alternatively, Mr. O'Rourke may submit a statement of non-opposition. The court also reminds Mr. O'Rourke to submit his consent or declination to the undersigned's jurisdiction.

## **IT IS SO ORDERED.**

Dated: August 18, 2015

  
LAUREL BEELER  
United States Magistrate Judge

United States District Court  
Northern District of California

1  
2 NICK O'ROURKE,  
3 Plaintiff,

4 v.  
5

6 PETALUMA HEALTH CENTER, INC., et  
7 al.,  
8 and

9 ANIIE NICOL, RN, FNP, PA, et al.,  
10 Defendants.  
11

12 Case No. 3:15-cv-03215-LB and  
13 3:15-cv-03219-LB

14 **CERTIFICATE OF SERVICE**

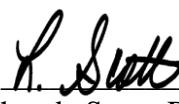
15 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
16 District Court, Northern District of California.

17 That on August 18, 2015, I SERVED a true and correct copy(ies) of the attached, by  
18 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
19 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
receptacle located in the Clerk's office.

20 Nick O'Rourke  
21 2117 St. Augustine Circle  
22 Petaluma, CA 94954

23 Dated: August 18, 2015

24 Richard W. Wieking  
25 Clerk, United States District Court

26  
27 By:   
28 Lashanda Scott, Deputy Clerk to the  
Honorable LAUREL BEELER